IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.2 OF 2007

Shri Pradeep Rajaram Tare ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Shri P.L.Sapkale, adv. for the Applicant.
Shri U.V.Nikam, APP for the Respondent/State.
Shri R.D.Suryawanshi, adv. for Original Complainant.

CORAM: J.H.BHATIA, J.
DATE : 13th February, 2007.

P.C.:

1. Heard Mr.Sapkale, the learned counsel for the applicant and Mr.Nikam, the learned APP for the State. Perused police papers.

2. The applicant seeks to be released on bail in Crime No.122 of 2005 registered at Vithalwadi police station for the offence punishable under sections 302, 307, 325, 326 read with Section 149 of the I.P.C.

3. The prosecution case in brief is that there was dispute between family of Balaram Mhatre on one hand and Pandhari Mhatre on the other hand about some agricultural land. Decree was passed in favour of Balaram Mhatre and land was to be measured through surveyor. On 18-11-2005, land was surveyed by surveyor

from the office of land records. On that day Balaram Mhatre, Ramesh Mhatre, Gurunath, Hanuman, Tukaram, Dinesh, Ravi were present. At that time, at about 10.15 a.m. abruptly Pandhari Babu Mhatre, came in one Sumo car while some persons came by 2 motor cycles. They were 12 named and 5 or 6 unnamed persons. Out of them, Pandharinath Mhatre and Ganesh Mhatre were holding swords, Rupesh was holding chopper, Kishor Mhatre and the present applicant, Pradip Tare were holding iron pipes, Sandip, Ramesh, Rupesh and Vijay were holding sticks. All these persons abruptly attacked Balaram Mhatre and his family members wherein Balaram died with several injuries. Gurunath, Ramesh and some others were injured. On the report lodged by Ravi B. Mhatre, the offence cameto be registered. In all 12 persons were arrested by the police out of them 7 persons have been granted bail while remaining are refused bail. Applicant is one of them.

4. At the outset, it may be made clear that after rejection of his bail application by the Sessions Court, the present applicant had previously filed Criminal Application No.1816 of 2006 for bail before this Court and on 10-10-2006, the said application was allowed to be withdrawn and was disposed off accordingly, presumably because the Court was not inclined to grant

bail. After withdrawal of that application, the applicant has filed second bail application before this Court. Normally, when one application is already rejected on merits, the applicant is not expected to file second application unless there is change in the circumstances. The learned counsel for the applicant contends that after withdrawal of earlier application, there has been changes in the circumstances in the sense that several other accused filed applications for bail and this Court had granted them bail on the ground that even if the accused was holding some sticks, etc. but no specific role was attributed to him in the actual assault to the deceased, he may be granted bail. This analogy was applied in the applications of the accused Sandip (Criminal Application No.3817 of 2007) and Ramesh Gaikwad. The learned counsel for the applicant contends that the said analogy is aptly applicable to the facts of the case against the present applicant, Pradip Tare and accordingly, his second bail application may be considered.

5. With the help of the learned counsel for both the parties, I have gone through the F.I.R., statements of injured persons, P.M.Report as also medical certificate. From the statements, it appears that presence of the present applicant alongwith other

accused was shown and he was allegedly holding iron pipes and he was one of the assailants. If the P.M.Report of deceased Balaram Mhatre is perused, it will be clear that he had suffered as many as 14 injuries. Except one abrasion and one contused lacerated wound, all other injuries were incised wounds which could be caused by sharp and cutting weapon. Nobody has specifically stated that the present applicant had caused any injury to the deceased. Name of the present applicant comes in the statement of injured Ramesh Mhatre as one of the assailants. However, Ramesh Mhatre also suffered two stabbed wounds and 2 incised wounds. Other two witnesses who suffered some incised wounds and some contusions have not specifically stated that injuries were caused to them by the present applicant. In fact, after withdrawal of the earlier application, I would not have ventured to go into the merits again but in view of the fact that 2 other accused were granted bail by this Court later on, on the basis of analogy that if the accused was not attributed any role in the assault of the deceased , he may be granted bail, I have considered the above evidence. I find that the case of the present applicant can not be distinguished from the case against other two accused, who are granted bail by this Court after the withdrawal of the earlier application by this applicant.

Therefore, I find that there is no justification to refuse bail to the present applicant also.

6. The applicant Pradip Tare be released on his executing P.R.Bond of Rs.25,000/- with one solvent surety with the condition that he shall not tamper the prosecution evidence and shall not misuse the bail. He shall also attend the Panvel city police station once in a week till conclusion of trial.

7. Any observations made in this application are limited for the purpose of deciding bail application and shall not be taken into consideration at the time of final trial.

8. On behalf of the prosecution, it is pointed out that some of the accused are in jail for more than one year and charge-sheet is also filed in February, 2006 but some of the accused persons are repeatedly making some applications and are not co-operating with the trial. Therefore, the learned Trial Court shall expedite the trial and disposed off the matter within three months.

9. The application stands disposed off.

(J.H.Bhatia,J.)